

OSCE/ODIHR Submission of Information about an OSCE Participating State or Partner for Co-operation under Consideration in the Universal Periodic Review Process

Participating State: Kyrgyzstan

UPR Working Group Session and Date of Review: 35th Session, 01-02/2020

Background

1. Kyrgyzstan has been a participating State in the former Conference on Security and Co-operation in Europe (CSCE) and the present Organization for Security and Co-operation in Europe (OSCE) since 1992 and 1994, respectively, and has thus undertaken and recently reaffirmed a wide range of political commitments in the human dimension of security, as outlined in relevant OSCE documents.¹

2. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been mandated by OSCE participating States, including Kyrgyzstan, to assist them in implementing their human dimension commitments. ODIHR assistance includes election observation and assistance activities as well as monitoring and providing assessments, advice and recommendations relating to the implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE area.

3. The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in Kyrgyzstan and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms in Kyrgyzstan.

Election-related activities

4. Following an official invitation to observe the October 2017 presidential election, and based on the recommendations of a Needs Assessment Mission, ODIHR deployed an Election Observation Mission (EOM).

5. The EOM final report concluded that the election “contributed to the strengthening of democratic institutions by providing for an orderly transfer of power from one elected president to another. The election was competitive, as voters had a wide choice and candidates could, in general, campaign freely, although cases of misuse of public resources, pressure on voters, and vote buying remain a concern. The technical aspects of the election were well administered, but the adjudication of election disputes by the [Central Election Commission CEC] was, at times, biased. While televised debates contributed to greater pluralism, self-censorship and limited editorial coverage of the campaign signalled deficiencies in media freedom. Voting was orderly and well organized in the large majority

¹ <https://www.osce.org/odihr/76894>; <https://www.osce.org/odihr/76895>.

of polling stations observed, despite problems with ballot secrecy. Numerous and significant procedural problems were noted during the vote count and the initial stages of tabulation”. The full report is available at <https://www.osce.org/odihr/elections/kyrgyzstan/374740?download=true>. Its priority recommendations were:

- a) The legal framework should be reviewed to address identified shortcomings through an inclusive and consultative process and in a timely manner. In particular, the law should be amended to include clear prohibitions and effective sanctions against the misuse of public resources. Consideration should be given to making vote buying a criminal offence and matter of public prosecution. Public sector employees should be shielded from pressure and intimidation. Procedures for establishing campaign violations should be clarified and a system of proportionate sanctions developed, with cancellation of a candidate’s registration possible only as an extraordinary measure for the most serious violations.
- b) The state should guarantee the right to a free and secret ballot. Any form of pressure to disclose how voters intend to vote or how they voted should be prevented. It should not be possible to associate a voter and her/his vote.
- c) The authorities should undertake efforts to create equal opportunities for all candidates. In particular, the rules for state officials in relation to the election campaign should be clarified, and penalties be increased for misuse of public resources. Furthermore, in line with the legislation, officials should avoid taking actions and making statements in favour of or detrimental to certain candidates.
- d) The legal framework on political and campaign finance should be improved to ensure greater transparency. Political parties should be required to submit financial reports annually. Campaign finance regulations should provide for an obligation to disclose funding sources before election day, publishing detailed final reports on campaign incomes and expenditures and results of their audit, and envisage a range of dissuasive and proportionate sanctions for violations of campaign finance rules.
- e) Article 4 of the Law on Guarantees for Activity of the President should be abolished to ensure that the reputation of the president is protected without undue privileges. The law should prioritize the use of non-pecuniary remedies, and a ceiling should be set for awarding damages that should take into account actual harm proven by the plaintiff as well as any redress already provided through non-pecuniary remedies. The plaintiff should bear the burden of proving the falsity of any statements of fact on matters of public concern.
- f) Article 299.1 of the Criminal Code should be revised to define “incitement of national (inter-ethnic), racial, religious or interregional enmity” in line with specific standards set by Article 20.2 of the ICCPR. Furthermore, key terms of the law, such as hatred, discrimination, hostility, and violence, should be clearly defined.
- g) The CEC’s handling of complaints about the misuse of public resources and intimidation of voters must utilize all available legal remedies to discontinue, sanction, and prevent such practices, conveying a strong message to the public and offenders that such practices will not be tolerated. To this end, the authorities could

create an inter-institutional task force ahead of the next elections, including the CEC, key ministries, law enforcement, and other relevant agencies.

Legislation reviewed by ODIHR

6. Upon request by authorities of a participating State, an OSCE field operation or another OSCE institution, ODIHR reviews draft or enacted legislation of OSCE participating States on topics relating to the human dimension commitments.²

ODIHR and Venice Commission Joint Opinion on the Draft Law on Introduction of Changes and Amendments to the Constitution of the Kyrgyz Republic³

7. The opinion was issued on 19 October 2016 following a request by the Acting Chairperson of the Committee of Constitutional Legislation, State Structures and Regulations of the Kyrgyz Parliament. With some modifications, the proposed changes and amendments were adopted by referendum in late 2016 (the most worrying draft provisions were dropped especially those which were substantially weakening the status and role of the Constitutional Chamber and the provision regarding the judges' waiver of their privacy rights).

8. Key remaining concerns:

- a) The provision guaranteeing access to effective remedies in cases of violations of human rights and fundamental freedoms was removed from the Constitution.
- b) The new provision on deprivation of citizenship is not clearly circumscribed and does not include relevant safeguards.
- c) More generally, the importance of human rights, and the supremacy of international human rights treaties within the domestic legal system have been watered down in the amended Constitution.

Opinion on the Draft Law on Resolution of Disputes through Mediation and Amendments to Related Legislation of the Kyrgyz Republic⁴

9. The opinion was issued on 5 August 2015 following a request by the Chairperson of the Parliamentary Committee on Judiciary Issues and Legality. The Opinion covered only the Law on Resolution of Disputes through Mediation. On 28 July 2017, a Law on Mediation was adopted in the Kyrgyz Republic. It entered into force on 11 February 2018.

10. This Opinion's main recommendation is to restructure the Draft Mediation Law to make sure it includes sufficient safeguards with respect to criminal mediation in line with international standards, to ensure the quality of mediation and guarantee procedural rights in the course of mediation processes.

² Legal reviews and opinions available at www.legislationline.org.

³ https://www.legislationline.org/download/action/download/id/6433/file/294_CONST_KGZ_19Oct2016_en_final.pdf.

⁴ https://www.legislationline.org/download/action/download/id/6347/file/273_GEN_KGZ_5_Aug_2015_en.pdf.

11. Main recommendations not included or only partially included in the draft law:

- a) Either broaden the scope of the Mediation Law to include other forms of alternative dispute resolution or to provide a more detailed definition of mediation that would also include the neutrality, impartiality and independence of the mediator in a process driven by the parties.
- b) Include a strong confidentiality clause subject to an exhaustive list of clearly outlined exceptions in line with international standards.
- c) Include a detailed provision in the Mediation Law specifying the kind of crimes which are suitable for victim - offender mediation; this list should exclude cases of domestic violence and similar crimes involving particularly vulnerable victims.

Tolerance and non-discrimination issues, including incidents of and responses to hate crime

12. OSCE participating States have committed to promote tolerance and non-discrimination and to combat hate crime, and ODIHR supports states in their implementation of those commitments. ODIHR produces an annual report on hate crime⁵ to highlight the prevalence of hate crimes and good practices that participating States and civil society have adopted to tackle them. ODIHR's data on hate crime is launched online each year on 16 November, covering information from the past calendar year. ODIHR also helps participating States to draft legislation that effectively addresses hate crimes; provides training that builds the capacity of participating States' criminal justice systems and their law-enforcement officials, prosecutors and judges; raises awareness of hate crimes among governmental officials, civil society and international organizations; and supports civil society efforts to monitor and report hate crimes.

Addressing hate crimes

13. Information concerning the Kyrgyzstan in the most recent (2017) edition of the annual hate crimes reporting⁶ includes:

- Overview of officially reported data

14. Kyrgyzstan has appointed ODIHR's National Point of Contact on Hate Crimes (NPC) who is placed at the Ninth Department of the Ministry of Interior. However, ODIHR concluded that Kyrgyzstan has not regularly reported reliable information and statistics on hate crimes to ODIHR. The last reported hate crime data was in 2013.

15. Kyrgyzstan's Criminal Code contains a specific penalty-enhancement provision and a substantive offence. Information reported to ODIHR consists of hate speech offences. Data is collected by the Ministry of Interior and is not publicly available.

- Overview of incidents reported to ODIHR by civil society

⁵ <http://hatecrime.osce.org>.

⁶ <http://hatecrime.osce.org/kyrgyzstan>.

16. In 2017, seven incidents were reported to ODIHR by civil society organizations. Two cases concerned incidents with a racist and xenophobic bias, one - an incident with a bias against Christians, and three - incidents with a bias against other groups – sexual orientation and gender identity. Six were classified as violent attacks against people.

Addressing racism and xenophobia (including national minorities and migrants)

17. For 2017, two hate incidents motivated by racism and xenophobia, both violent attacks against women nationals who had foreign male partners, were reported to ODIHR by intergovernmental organizations. No hate incidents were reported to ODIHR for this category for the years 2015 and 2016.

Addressing anti-Semitism and intolerance against Muslims, Christians and other religions

18. Every two years, ODIHR publishes Holocaust Memorial Days: An overview of remembrance and education in the OSCE region⁷ to highlight good practices in participating States regarding Holocaust commemoration and education. For 2015-2017 ODIHR did not receive from Kyrgyzstan information about the Holocaust commemoration and educational practices.

19. For 2015-2017 Kyrgyzstan did not report anti-Semitic hate crimes; there was also no information on anti-Semitic incidents from the civil society organizations for this period.

20. For 2017, one hate incident motivated by intolerance against Christians and other religions, a violent attack, was reported to ODIHR by intergovernmental organizations. No hate incidents were reported to ODIHR for this category for 2015 and 2016.

21. For 2015-2017, no hate crimes motivated by intolerance against Muslims were reported to ODIHR by Kyrgyz authorities or by civil society organizations.

Women's rights and gender equality in the context of tolerance and non-discrimination

22. For 2017, no hate crimes motivated by bias against a person's sex were reported to ODIHR by Kyrgyz authorities. One hate incident (violent attack against people) with such bias was reported by civil society organizations. Kyrgyzstan had not reported hate crimes motivated by bias based on sexual orientation and gender identity, while civil society organizations reported three hate incidents motivated by this bias – all violent attacks against people.

23. For 2016, Kyrgyzstan has not reported hate crimes motivated by bias against a person's sex; there was also no information on hate incidents motivated by this bias from the civil society organizations. No information on hate crimes motivated by bias based on sexual orientation and gender identity were received from Kyrgyzstan; civil society organizations reported seven hate incidents with this bias: five violent attacks against people and two threats.

⁷ <https://www.osce.org/odihr/hmd2018>.

24. For 2015, no official data for hate crimes motivated by bias against a person's sex neither bias based on sexual orientation and gender identity is available for the 2015. Civil society organizations reported fourteen hate incidents motivated with bias based on sexual orientation and gender identity. Eleven of them being violent attacks against people, one threat against people and two attacks against property. No data on hate incidents motivated by bias against person's sex is available from civil society organizations.

Country-specific ODIHR monitoring, assessment, co-operation and assistance activities (other than elections)

25. In the case of the human rights defender Azimjan Askarov, ODIHR noted with serious concern the 24 January 2017 court decision confirming his life sentence. The court's decision contravened the April 2016 views on Mr. Askarov's case by the UN Human Rights Committee, which had called upon authorities to immediately release him, quash his conviction, and provide reparations for his unlawful and arbitrary detention, torture and ill-treatment, and violations of his fair-trial rights. In April and July 2016 public statements⁸ ODIHR urged the authorities to implement the remedial recommendations of the UN Human Rights Committee on the case of Mr. Askarov.⁹

Other assessments and recommendations contained in ODIHR reports on thematic human dimension issues

26. The ODIHR report "The Responsibility of States": Protection of Human Rights Defenders in the OSCE Region (2014–2016)¹⁰ included information about cases and issues related to human rights defenders in Kyrgyzstan.

27. The report included Kyrgyzstan among countries where civil society identified instances of law enforcement authorities failing to adequately investigate, prosecute and punish threats and attacks against human rights defenders – including journalists, lawyers, and defenders of the rights of women, ethnic minorities, and LGBTI people. Human rights defenders in Kyrgyzstan also expressed concerns regarding the application of criminal legislation on "extremism" to their human rights-related professional activities. Kyrgyzstan was among those countries where ODIHR received reports from human rights defenders and other actors of judicial irregularities and the denial of fair trial rights of human rights defenders.

28. The following are excerpts from the report:

29. An LGBTI human rights NGO reported that it did not submit a complaint to police following an April 2015 attack with Molotov cocktails on its former office, fearing the disclosure to police of the identities of LGBTI community members. On 17 May 2015, the

⁸ www.osce.org/odihr/235736; <http://www.osce.org/odihr/251936>.

⁹ Notably, Article 41.2 of the Kyrgyz Constitution provided for the direct implementation of views and decisions of international human rights bodies. Following a December 2016 referendum, however, Kyrgyzstan amended its constitution to repeal Article 41.2, despite the recommendations of ODIHR and the Venice Commission in an August 2016 legal opinion to retain the provision (<http://www.osce.org/odihr/261676>). Under international law, Kyrgyzstan is still obligated to release Mr. Askarov, in accordance with the Human Rights Committee's views and irrespective of the referendum, which did not alter Kyrgyzstan's obligations (see Article 27 of the Vienna Convention on the Law of Treaties from 1969).

¹⁰ <https://www.osce.org/odihr/341366>.

NGO reported that about 30 members of several nationalist groups attacked about 30 LGBTI people at a restaurant on the International Day against Homophobia and Transphobia, while shouting abusive and homophobic slurs at them. The law enforcement response was reportedly so inadequate and traumatizing for the victims that the NGO indefinitely stopped all public outreach activities and large events to prevent the recurrence of similar attacks.¹¹

30. Human rights defenders reported (and the government acknowledged by letter to ODIHR) that authorities had unlawfully seized lawyers' confidential and privileged documents on human rights-related cases, in broad searches for alleged "extremist materials".¹² In March and April 2015, the State Committee on National Security (GKNB) summoned, questioned, monitored, searched, and/or seized properties from several lawyers' homes and the Osh office of the human rights NGO Bir Duino. On 30 April 2015, the Osh Province Court overturned three lower court rulings based on which the GKNB conducted the searches, finding unlawful the procedural activities and actions of investigators, in the seizure of the lawyers' case files, computers and other properties. On 24 June 2015, the Supreme Court also ruled in favour of Bir Duino.¹³

31. In a positive development in Kyrgyzstan, the Parliament's Committee on Constitutional Legislation, State Structure, Judicial and Legal Issues, and Regulations rejected the draft law "on peaceful assemblies", which provided for potentially excessive restrictions. ODIHR also observed, as a positive development, that the Kyrgyz Parliament rejected similar draft legislation on "foreign agents", during the third reading on 12 May 2016.¹⁴

¹¹ Police officers allegedly detained both victims and perpetrators together at the police station for seven hours, where the victims continued to be verbally threatened by their assailants. Additionally, the NGO reported that "the officers discriminated and humiliated transgender persons, due to the discrepancy between their gender markers in the passports and the actual appearance. Some of the transgender persons were asked to undress to explain the differences between the information in their passports and contradicting physical appearance." Legal proceedings were reportedly initiated against only one of the alleged attackers.

¹² Under Article 13 of the Kyrgyz Law on Countering Extremist Activity, information materials are declared extremist by a court at the request of a prosecutor's office, following which they are forwarded to justice authorities, which then compile a list of extremist materials and make it public. The NGO Bir Duino noted that, according to official letters issued by Deputy Minister of Justice U. Dootaliyev, dated 11 December 2014, and acting State Secretary of the Ministry of Justice N. Tashtanov, dated 19 March 2015, the Ministry of Justice had not received copies of final and binding judgments declaring any information materials extremist, which indicates that the court issued unlawful search warrants under the pretext of confiscating extremist materials while no information materials had been recognized as extremist.

¹³ For background on the cases, see <http://www.osce.org/odihr/265816>.

¹⁴ <http://www.osce.org/odihr/240171>.